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**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

PAUL STRASTERS and ZADELLE
STRASTERS, a married couple,

Plaintiffs

v.

WEINSTEIN & RILEY, P.S. and
WELLS FARGO BANK, N.A. a
nationally chartered bank
holding company;

Defendants.

CASE NUMBER: CV-10-3070-RHW

WEINSTEIN & RILEY, P.S.' REPLY
BRIEF IN SUPPORT OF ITS MOTION
FOR SUMMARY JUDGMENT

REPLY BRIEF IN SUPPORT OF WEINSTEIN & RILEY, P.S.'
MOTION FOR SUMMARY JUDGMENT

COMES NOW, Weinstein & Riley, P.S. ("W&R"), Defendant in
the above-styled and numbered action"), who hereby files this
reply in support of its motion for summary judgment and would
respectfully show the following:

I. INTRODUCTION

Washington case law regarding contracts is clear: a
contract means what it says. The contract at issue here is a
settlement agreement whereby Plaintiffs were paid for their

1 claims and released Defendant W&R. No interpretation is
2 necessary.

3 Furthermore, Plaintiffs filed their response brief 20 days
4 beyond the filing deadline, and as such, the brief should be
5 stricken and/or treated as consent to Defendant W&R's motion for
6 summary judgment. See Motion to Strike (Dkt # 50).
7

8 Based on the relevant principles of contractual
9 interpretation, and the Plaintiffs' repeated failure to adhere
10 to this Court's local rules, W&R should prevail on its motion
11 and have summary judgment rendered in its favor.
12

13 14 **II. ARGUMENT AND AUTHORITIES**

15 **A. WASHINGTON FOLLOWS THE OBJECTIVE THEORY OF CONTRACT INTERPRETATION, AND** 16 **THE CONTRACT IN THIS CASE RELEASES W&R FROM LIABILITY.**

17 What is clear is that the settlement agreement in this case
18 includes Wells Fargo and its attorneys. See Dkt# 41 Exhibit
19 "A". Plaintiffs spend their response brief arguing "intent,"
20 but fail to apply the proper rules in doing so.
21

22 The objective theory of contract interpretation is the law
23 in Washington. Under this approach, a court must attempt to
24 ascertain the intent of parties to a contract from the ordinary
25 meaning of the words within the contract, and not from the
26 parties "unexpressed subjective intent." *Hearst Commc'ns, Inc.*
27 *v. Seattle Times Co.*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005).
28

1 A contract is only ambiguous if it is susceptible to more than
2 one reasonable interpretation. *Quadrant Corp. v. Am. States*
3 *Ins. Co.*, 154 Wn.2d 165, 171, 110 P .3d 733 (2005).

4 The settlement agreement attached as Exhibit "A" to W&R's
5 motion for summary judgment speaks for itself. The parties
6 released from liability include Wells Fargo and its attorneys.
7 It cannot be disputed that W&R is one of Wells Fargo's
8 attorneys; in fact, this entire case is predicated on actions
9 taken by W&R during the course of its representation of Wells
10 Fargo. See Complaint at 3 (dkt# 1).

11 Under the objective theory of contract interpretation, a
12 contract means what it says. The contract at issue here, the
13 settlement agreement, says that Wells Fargo and its attorneys
14 are released from liability in exchange for payment to the
15 Plaintiffs to release their claims. W&R are attorneys for Wells
16 Fargo. Therefore, W&R is objectively covered under the
17 settlement agreement. As stated in *Hearst*, the unexpressed
18 subjective intent of the parties is not a relevant inquiry in
19 this situation. 154 Wn.2d 493.

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25 **B. DOUBLE-RECOVERY OF DAMAGES IS PROHIBITED.**

26 Even if the settlement agreement did not apply, which it
27 does under the objective theory of contractual interpretation,
28 W&R reiterates its argument that any additional recovery by

1 Plaintiffs is prohibited by law. See *Eagle Point Condo. Owners*
2 *Ass'n v. Coy*, 102 Wn.App. 697, 702, 9 P.3d 898 (2000);
3 *California v. Chevron Corp.*, 872 F.2d 1410, 1414 (9th Cir.
4 1989); *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 297, 122 S.Ct.
5 754, 151 L.Ed.2d 755 (2002).

6
7 It is undisputed that this entire case stems from one
8 letter sent to Plaintiffs on July 30, 2010. It is also
9 undisputed that Plaintiffs were paid compensation pursuant to a
10 settlement agreement for their claims. Plaintiffs now want to
11 peel off the same claim that was settled against Wells Fargo and
12 double-dip by pursuing it against W&R, all while incurring
13 additional attorney's fees while doing so (thus increasing the
14 value of their case).

15
16 Any claims held by Plaintiffs as a result of the July 30,
17 2010 were released upon settlement. Permitting a second
18 recovery would be contrary to both law and equity.
19

20 21 **III. CONCLUSION**

22 In Washington, contracts mean what they say. The contract
23 here, the settlement agreement resolving this case, states that
24 Wells Fargo and its attorneys are released from liability. W&R
25 is undisputedly an attorney for Wells Fargo and therefore is
26 released from liability in exchange for the payment made to
27 Plaintiffs.
28

1 Even if the contract did not apply, Plaintiffs have already
2 been compensated for their claims. Seeking another bite at the
3 same apple is contrary to established principles of law.
4 Plaintiff's position of "one letter, two recoveries" does not
5 comport with existing law.
6

7 Lastly, Plaintiffs' response was filed 20 days past its due
8 date, and should be stricken or treated as consent to the entry
9 of an order dismissing this case.

10 For all of the above reasons, Summary Judgment should be
11 entered in favor of Defendant W&R.
12

13 **IV. PRAYER**

14 WHEREFORE, for the foregoing reasons, Defendant Weinstein &
15 Riley, P.S. respectfully requests the following:

- 16 1. That Defendant's Motion for Summary Judgment be granted in
17 its entirety; and
18 2. For such other and further relief, both at law and in
19 equity, to which Defendant may be justly entitled.
20

21
22 Dated: June 21, 2011

23 Respectfully Submitted,

24
25 s/ Jason D. Anderson
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CERTIFICATE OF SERVICE

The undersigned certifies that on June 21, 2011, a copy of
the foregoing was electronically transmitted to the Clerk's
Office using the CM/ECF System for filing and transmittal of a
Notice of Electronic Filing to the following CM/ECF registrants:

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